



## City of San Antonio, Texas

Ethics Advisory Opinion No. 2015-04

April 15, 2015

*Issued By: City Attorney's Office*

### **I. Issue:**

May members of City boards and commissions make contributions to the campaign of a candidate for a place on the City Council?

### **II. Inquiry**

A member of a City board has inquired whether or not he may make a contribution to the candidate of his choice for election to a place on the City Council. He notes that in training presentations, he was informed that City employees may not contribute to nor participate in the campaign of a candidate for City Council.

### **III. The Ethics Code**

#### **The Ethics Code – Political Activity**

The City Ethics Code sets out standards of conduct for City officials and employees. Under Section 2-42 (Definitions), officials include:

members of all boards, commissions, committees, and other bodies created by the City Council pursuant to federal or state law or City ordinance, including entities that may be advisory only in nature; and board members of any entity who are appointed by the City Council to such board membership.

Under this definition, a member of a City board or commission is a City official. As a City official, the commissioner is subject to the standards of conduct set out in the Code of Ethics.

Section 2-50 (Political Activity) of the Ethics Code imposes the following restrictions on City officials and employees:

a. **Influencing Subordinates.** A City official or employee shall not, directly or indirectly, induce or attempt to induce any City subordinate of the official or employee:

1. to participate in an election campaign, contribute to a candidate or political committee, or engage in any other political activity relating to a particular party, candidate or issue, or

2. to refrain from engaging in any lawful political activity;

A general statement merely encouraging another person to vote does not violate this rule.

b. **Paid Campaigning.** A City official or employee shall not accept any thing of value, directly or indirectly, for political activity relating to an item pending on the ballot, if he or she participated in, or provided advice relating to, the exercise of discretionary authority by a City body that contributed to the development of the ballot item.

c. **Official vehicles.** A City official or employee shall not display or fail to remove campaign materials on any city vehicle under his or her control.

Limitations on the use of public property and resources for political purposes are imposed by Section 2-49 (Public Property and Resources).

Under Section 2-49, the board member, as a City official, cannot use, request or permit the use of City facilities, personnel, equipment or supplies for private purposes, including political activities.

#### **IV. Other Limitations on Political Activity**

##### **A. State Law**

Section 2-50 refers also to the limitations on political activity set out in state law, the City Charter and the City Personnel Rules. State law prohibitions apply to state employees. Because the zoning commissioner is not a state employee, these provisions would not apply. See V.T.C.A. Government Code §§556.001 – 556.005.

##### **B. City Administrative Directives**

City Administrative Directive 1.2 imposes far stricter limits on political activity than the City Ethics Code. A.D. provides direction and guidance to all employees (other than uniformed employees governed by Chapter 143 of the Texas Local Government Code) regarding allowable and prohibited political activities. The A.D. is not applicable to volunteers, which include members of City boards and commissions.

##### **C. The City Charter**

Article VI of the City Charter established the Municipal Civil Service and provisions related to the management of that service. Section 78(c)-(g) within Article VI sets out specific limitations on political activity:

(c) No City employee may circulate petitions for city council candidates or city elections, receive or solicit any contribution for any city council candidate or city election other than for their own candidacy or campaign;

(d) No City employee shall make any contribution to the campaign funds of any candidate for City office or take any part in the management or affairs or political campaign of any candidate for City office, other than for their own candidacy or campaign, further than in the exercise of his rights as a citizen to express his opinion and to cast his vote:

(e) No employee of the City may wear city council campaign buttons nor distribute literature at work or in a city uniform or in the offices or building of the City of San Antonio.

(fg) City employee organizations shall not be allowed to make any contribution to the campaign funds of any candidate for City office or take part in the management or affairs of a political campaign for City office, further than to express opinions, except as authorized by state law.

As with the City Personnel Rules, the board member is not an employee and therefore is not subject to the restrictions listed in Section 78.

Article XII (General Provisions), Section 140(b), though, does impose one limitation on board members. It states:

No appointee of any City board or commission shall continue in such position after becoming a candidate for nomination or election to any City or Bexar County elected office.

With only that exception, the City Charter does not restrict the board member from engaging in political activity, including contributing or participating in a city election campaign.

## **V. Summary of Prohibitions and Restrictions on Political Activity**

Under the Ethics Code, a City official, including board and commission members, must abide by the restrictions on political activity as set out in Section 2-50. In short, an official cannot induce or attempt to induce any City subordinate of that official to participate or contribute to a campaign, or to refrain from any lawful political activity. The official cannot accept anything of value for political activity relating to an item pending on the ballot if that person contributed to the development of the ballot item. Further, the official cannot display campaign materials on any City vehicle. Under Section 2-49, the official cannot use or permit the use of City facilities, personnel or equipment for private purposes including political activity.

Some of the general provisions of the Ethics Code may also apply in this situation:

Section 2-44 of the Ethics Code prohibits all City officials from using their position "to unfairly advance or impede private interests, or to grant or secure, or attempt to grant or secure, for any person . . . any form of special consideration, treatment, exemption, or advantage beyond that which is lawfully available to other persons." Under this section, the official cannot use his position as a City board member to advance the interests of any campaign for which he might work.

Section 2-46 also imposes an ongoing obligation upon City officials to refrain from using their position to obtain confidential information for any purpose other than the performance of their duties. It also prohibits them from intentionally or knowingly disclosing such information gained as a result of their position. Therefore, the official cannot obtain or disclose confidential information for any purpose, other than those related to carrying out his duties as a member of the City board.

Finally, under the City Charter, the board member would resign his position if he or she were to file for election to a city or county office. Article XII, Section 140(b).

#### **IV. Conclusion**

State law, the City's Ethics Code, Charter, and Administrative Directive on political activities do not prohibit a member of a board or commission from participating in a municipal election by supporting a candidate for city council. Board and commission members may not, however, use any city resource to do so, and may not electioneer in a City facility (including the wearing or passing out of campaign material). Further, as a City official, board members may not attempt to influence subordinates to support a candidate or use confidential information improperly.